

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CA05-88E

PETITION FOR WRIT OF HABEAS CORPUS
(28 U.S.C. §2254 - PERSONS IN STATE CUSTODY)

Anderson, Reginald, PETITIONER
(Full name) (Include name under which you were convicted)

vs.

CASE NO. _____
(Supplied by the Court)

Mr Kyler, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized
person having custody of petitioner)

and

THE DISTRICT ATTORNEY OF THE COUNTY OF Erie MAR 18th 2005

and

THE ATTORNEY GENERAL OF THE STATE OF Pennsylvania
ADDITIONAL RESPONDENT

Anderson
Name EB 2303
Prison Number

Huntingdon
Place of Confinement

(If petitioner is attacking a state court judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment. DO NOT USE THIS FORM FOR §2255 PURPOSES.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

INSTRUCTIONS - READ CAREFULLY

(1) This petition must be legibly handwritten or typewritten and signed by the petitioner. Any false statement of a material fact in this petition or in a motion for leave to proceed in forma pauperis as the basis for prosecution and conviction for

PETITION

1. Name and location of court which entered the judgment under attack: Erie County Court
2. Criminal Docket Number: 330 of 1999
3. Date of imposition of sentence: 9-16-1999
4. Length of sentence: 32 month to 10 years
5. Nature of offense or offenses for which you were convicted: _____
6. What was your plea? (Check one) Not Guilty () Guilty ()
Nolo Contendere ()
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____
7. If you were found guilty after a plea of not guilty, check whether finding was made by: Jury (✓) Judge only ()
8. Did you testify at the trial? Yes (✓) No ()
9. Did you appeal from the judgment of conviction? Yes () No ()
10. If you did appeal, answer the following:
 - (a) First Appeal
 - (1) Name of Court: _____
 - (2) Docket Number: _____
 - (3) Result: _____
 - (4) Citation (If known): _____
 - (b) Second Appeal
 - (1) Name of Court: _____
 - (2) Docket Number: _____
 - (3) Result: _____
 - (4) Citation (If known): _____
 - (c) If you filed a petition for certiorari in the United States Supreme Court, give details: _____
11. Other than a direct appeal from the judgment of conviction and

cations, or motions with respect to this judgment in any court, state or federal, including petitions under the Post Conviction Hearing Act? Yes () No ()

12. If your answer is "Yes" to 11, give the following information:

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()

(5) Result: _____ Date: _____

(b) As to any second petition, application or motion give the same information:

(1) Name of Court: _____

(2) Nature of Proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()

(5) Result: _____ Date: _____

(c) As to any third petition, application or motion give the same information:

(1) Name of Court: _____

(2) Nature of Proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()

(5) Result: _____ Date: _____

(d) Did you appeal to the highest state court having juris-

(1) First petition, etc.: Yes () No ()

(2) Second petition, etc.: Yes () No ()

(3) Third petition, etc.: Yes () No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not? _____

13. State concisely every ground on which you claim that you are being held unlawfully. State specifically the facts supporting each ground. You should raise in this petition all available grounds (relating to this conviction) on which you are being held in custody unlawfully, and you should state all the facts sufficient to support each ground. DO SO NOW; because of recent changes in the law you may not be given an opportunity to amend your petition later (See instructions, number 7.).

Grounds: Shup
Shup v. Delo
Shup v. Delo

14. If any of the grounds listed were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: Lack of Knowledge

15. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes () No ()

16. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Christine Konec

(b) At arraignment and plea:

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

17. Were you sentenced on more than one count of any indictment, or more than one indictment, in the same court and at the same time: Yes () No ()

18. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes () No ()

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes () No ()

Wherefore, petition prays that the court grant petitioner relief to which he may be entitled in this proceeding.

Executed at: _____
(City, County, State)

I, Anderson declare under penalty of perjury that the foregoing is true and correct.

Executed on: _____
(Date)

Anderson
(Signature of Petitioner)

~~Shirley W. Delo~~

**RESPONDENT'S BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF HABEAS CORPUS**

MAR 7 8 2005

A. Relevant History and Procedure

On September 16, 1999, after a two-day trial, Petitioner was convicted of terroristic threats and criminal attempt to commit kidnaping. Petitioner was sentenced on October 29, 1999, to an aggregate of thirty-two (32) months to ten (10) years incarceration. Thereafter, Petitioner filed a *pro se* Motion for Reconsideration on November 5, 1999, which was subsequently denied. Petitioner's first PCRA was filed *pro se* on October 31, 2000.

In Petitioner's October 31, 2000, *pro se* PCRA, he checked the following reasons, on the standardized, pre-printed PCRA form, for filing the PCRA:

4. I am eligible for relief because of:

- (I) A violation of the constitution of Pennsylvania or laws of this Commonwealth or the constitution of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (II) Ineffective Assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (V) A violation of the provisions of the constitution, law or treaties of the United States which would require the granting of federal habeas corpus relief to a state prisoner.

See Petitioner's *pro se* PCRA, filed October 31, 2000, p. 2. However, the facts, in support of the alleged errors, merely reiterates (I) from #4 on the PCRA form, which states the following:

A violation of the constitution of Pennsylvania or laws of this Commonwealth or the constitution of the United States which, in the circumstances of the particular case, so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place.

Hi Clerk,

CA05-886

Taken from Erie to Pittsburgh
No You Did not have to give
me EB 7303

RECEIVED

MAR 1 2005

CLERK U.S. DIST. COURT
WEST DIST. OF PENNSYLVANIA

Anderson
EB 7303